

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.2625 OF 1989

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
  2. To be referred to the reporters or not ?
  3. Whether their lordships wish to see the fair copy of the judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
  5. Whether it is to be circulated to the Civil Judge?

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HN MUJADIA & ORS  
VERSUS  
OIL & NATURAL GAS COMMISSION & ANR.

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Appearance:

MR AK CLERK for Petitioners No.1, 3 & 4  
MS KALPANA BRAHMBHATT for Respondents

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Coram: MR.JUSTICE S.K. Keshote,J  
Date of decision:26/11/1999

C.A.V. JUDGMENT

#. The petitioners, by this writ petition under Article 226 of the Constitution challenges the alleged discrimination stated to be made by the Oil & Natural Gas

Commission, the first respondent herein, in the matter of promotion of its employees on the post of Production Operator to Chargeman. It is the grievance of the petitioners that the respondent No.1 is employing pick and choose method and has given promotion to the juniors to the petitioners and the petitioners have been left out in spite of the fact that they are eligible for promotion to the higher cadre. The petitioners in the special civil application prayed for following reliefs:

(A) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may kindly be issued directing the respondents, their agents and servants to give the promotion to the petitioners from the post of Production Operator to the post of Chargeman (Production) with effect from 17.3.80.

(B) Pending admission and final hearing of this petition, the respondents their agents and servants be directed to consider the case of the petitioners to give the promotion to the petitioners from the post of Production Operator to the Chargeman (Production) with effect from 17.3.80.

(C) Pending admission and final hearing of this petition, an interim stay restraining the respondents, their agents and servants from giving any further promotions from the post of Assistant Engineer (Production) to the post of Assistant Executive Engineer (Production) to any other persons, may kindly be granted.

(D) Any other order that may be deemed fit in the nature and circumstances of the case may kindly be granted.

(E) Costs of this petition may kindly be awarded.

#. In paragraph 3.3 of the special civil application, the petitioner made a reference to the alleged three junior persons to them. In this paragraph, the petitioners have given out their own seniority numbers and seniority of those persons in the seniority list. It is the case of petitioners that seniority in the corporation of the category to which they belong is maintained regionwise. The petitioners are under western region of ONGC. Those three juniors, as per the case of petitioners, were transferred to other regions and there they have been given promotion. The learned counsel for

the petitioner contended that as per the Commission's own regulations, the petitioners should have been given promotion from the date from which those three junior persons were given promotion. Making reference to the relevant clause (g) of the regulation, he submitted that merely because those persons were transferred to other regions, they could not have been put and placed in better position than the petitioners. They retained the seniority in the region concerned and as such, when they were given promotions in other region, the petitioners are to be given promotion. Lastly, it is contended that it is not the case of appointment of those persons in the other region. It is the case of promotion and in fact the respondent-Commission has executed an example of favouritism and nepotism by extending undue benefit to the junior persons at the cost of rights of the seniors.

#. Ms.Kalpana Brahmbhatt, learned counsel for the respondents, in contra, contended that the petitioners have no case on merits. In the western region where the petitioners are working, no person junior to them has been promoted. Those three persons whose cases have been cited, Ms.Brahmbhatt submits that initially they were on seniority of the western region. However, later on, they were appointed in other regions and their names were not shown on the seniority roll of western region. It is contended that as those persons have been appointed in other region, their seniority is not retained and cannot be retained in the western region. In the western region, no person junior to petitioner has been given promotion. She further contends that though initially those persons were transferred to Bombay Offshore Project, but later on they were appointed to the post of Chargeman and no parity can be claimed by petitioners in the matter of promotions. Otherwise also, none of the legal or fundamental rights of the petitioners are infringed as those persons are working in different regions.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. From the contention of the learned counsel for the parties and their pleadings, I find that substantial facts are not in dispute. However, a controversy has been raised on the question that those three junior persons are promoted in another region and they have not been appointed on the higher post. Along with the reply to the special civil application, the respondents have not produced any order of their appointment but this is not very material. Appointment is one thing and method

of recruitment is another thing. Appointment can be made by different methods or mode of recruitment, i.e. by way of direct recruitment or by way of promotion or by way of transfer or by way of absorption etc. So both the learned counsel for the parties though proceeded with the word 'appointment', the important thing is whether those persons were appointed by promotion or by direct recruitment? In case those persons were appointed by direct recruitment, certainly the petitioner could not have made any claim over those persons of promotion in the western region. Here the learned counsel for the petitioners has given out by reading certain paragraph from the rejoinder to the reply that there is no question of any direct recruitment to be made on the post of Chargeman (P). This post has to be filled in 100% by promotion. On this question, the learned counsel for the respondent is unable to satisfy this court. So I proceed in this matter with the accepted fact that those persons were given appointments by promotion on the post of Chargeman (P) in another region.

#. Then the question does fall for consideration whether only on this count whether relief as prayed for by petitioners can be granted? It is to be noted here that the petitioners have not impleaded those persons as party to this petition. In the absence of those persons, otherwise also, it is difficult to decide this matter more so, if any finding is given in this matter in favour of petitioner or any relief is granted in their favour, it may possibly adversely affect their right of seniority or promotion in this region or the transferee region. Be that as it may, I do not find any merits in this Special civil application otherwise also. Along with the reply, the respondents submitted regulation of the Corporation and therefrom I find that there is a provision for fixation of seniority of decentralised cadre. The petitioners and those persons as per the case of the learned counsel for the petitioners belong to the decentralised cadre. This provision reads as under:

"G. Seniority of Decentralised Cadres:

- (a) The seniority in respect of decentralised cadres will be maintained regionwise and in respect of former Class IV staff, officewise.
- (b) In the event of transfer of an employee belonging to decentralised cadres, in the interest of the Commission, from one office to the other, or from one region to the other region, the seniority of the employee will be retained in his original

regions, and the employee will be considered for promotion in his turn in his parent region.

(c) When such an employee is due for promotion, to the next higher post, in his parent region, he will be posted back to that region. In case, on account of exigencies of work, it is not possible to post the employee back to the region of his original posting, the employee will be given proforma promotion, if he is approved for promotion and the candidate next below him in the region will be promoted to fill that vacancy;

(d) Where the Commission decides that the employee concerned should go back to his parent region on promotion, and he refuses, to do so, proforma promotion will not be given to him.

(e) In case, an employee belonging to a decentralised cadre is transferred at his own request, from one region to another, his name will be struck off and he will be placed at the bottom in the seniority list of the region to which he is transferred."

#. The learned counsel for the petitioners placed reliance on clause (b) of this provision. In his submission as those three persons have to retain their seniority in the western region, if they have been promoted in the transferee region, same benefits are to be given to the petitioners.

#. There is a fallacy in this contention of the petitioners. This provision nowhere contemplates what the learned counsel for the petitioners is contending nor this provision provides for such promotion in the contingencies as what it has arisen in the case as per the petitioners' averments in the special civil application. This provision lays down provisions for seniority of decentralised cadre where an employee belonging to decentralised cadre is transferred in the interest of Commission to another region. A provision has been made for retention of seniority in the original region and a further right has been conferred of consideration of his case for promotion in his parent region. It is no more res-integra that unless otherwise provided by the rules, regulations regulating the service conditions of the employees if an employee is transferred from one cadre to another cadre or from one region to another region or from one department to another, whether the seniority has to be fixed regionwise or departmental

wise or cadrewise or where there is a water tight compartment, on his request it will be at the loss of seniority. But where an employee is transferred from one cadre to another cadre or from one region to another region etc., in the interest of commission, which is commonly said to be for the administrative reasons, i.e. to be more precise, otherwise than on request transfer, he cannot be put to suffer loss of seniority, but at the same time the employee of the transferee region or departments as the case may be also cannot be put to suffer their promotional chances because of a person having longer length of services has been transferred in the interest of commission or for administrative reasons. So to see that none of the employees, i.e. transferee employee and the employee of the transferee department or region may not suffer either way this provision has been made for retention of seniority of that the employees concerned in the parent region and further a right has been conferred for consideration of his case for promotion in his parent region. The learned counsel for the petitioner has not correctly appreciated and presented the provision before this court. In case what he is contending is accepted, then it will create chaos and further though otherwise the petitioners may not be entitled for promotion, in these circumstances, they will get promotion. There is a possibility that in transferee regions post may be available for promotion and because of that those persons would have been given promotion but that is the promotion only in the region concerned and not in the parent region. This provision is in favour of those transferees and not for the petitioners. This is a rule of seniority and a right conferred to those transferees who have been transferred in the interest of corporation to have their right of consideration of promotion in the parent cadre. It has nothing to do with the promotion to the next higher post as what it is tried to be presented by learned counsel for the petitioners.

#. The learned counsel for the petitioners has failed to show any provision from the regulation of the Commission wherein it has been provided that where a junior has been transferred to another region and where he has been promoted, the seniors in the parent region are also to be promoted. In the absence of any such regulation or rules of the Commission merely because those juniors have been transfer to other region and there they have been given promotion, relief of the nature as prayed for by petitioners in this special civil application cannot be granted. Promotion is not a right though right of consideration of promotion may be a fundamental right. It is not the case where any person junior to petitioners

in the western region has been given promotion. Where those persons in case would have been continued in their parent region and they would have been promoted, then there would have been some justification in this claim of the petitioners but not in the facts of this case. The contention raised on the ground of favouritism, nepotism, also could not be substantiated by the learned counsel for the petitioners. These contentions are akin to the contentions of malafides and it is no more res-integra that the party against whom the allegation is made and the party who has been favoured are necessary parties to such petition.

##. Taking into consideration the totality of the facts of this case, in this case, none of the legal or fundamental rights of the petitioners are being infringed. The claim of the petitioners for promotion with reference to the date from which the alleged juniors in this region who have been transferred to other regions is wholly baseless and cannot be granted.

##. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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(sunil)